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Church-Cooper Amendment to the Foreign

Military Sales Act (H.R. 15628)

As of Senate adjournment 11 June 1970, the language of the so-called Church-Cooper amendment (section 7 of the bill) reads as follows (amendments to the amendment approved by the Senate 26 May 1970 and 11 June underscored):

"SEC. 7. The Foreign Military Sales Act is further amended by adding at the end thereof the following new section:

"SEC. 47. Limitations on U.S. Involvement in Cambodia:
In concert with the declared objectives of the President of the United States to avoid the involvement of the United States in Cambodia after July 1, 1970, and to expedite the withdrawal of American forces from Cambodia, it is hereby provided that unless specifically authorized by law hereafter enacted, no funds authorized or appropriated pursuant to this act or any other law may be expended after July 1, 1970, for the purpose of--

"(1) retaining United States forces in Cambodia;

"(2) paying the compensation or allowances of, or otherwise supporting, directly or indirectly, any United States personnel in Cambodia who furnish military instruction to Cambodian forces or engage in any combat activity in support of Cambodian forces;

"(3) entering into or carrying out any contract or agreement to provide military instruction in Cambodia, or to provide persons to engage in any combat activity in support of Cambodian forces; or

"(4) conducting any combat activity in the air above Cambodia in support of Cambodian forces.

Nothing contained in this section shall be deemed to impugn the constitutional power of the President as Commander in Chief."

Excerpt from Senate Foreign Relations Committee
Report No. 91-865, pages 9 and 10, Explaining the
Purposes of the Church-Cooper Amendment

Section 7—Prohibition of assistance to Cambodia

The objective of this section is to avoid the involvement of the United States in a wider war in Indochina and expedite the withdrawal of U.S. forces from Vietnam. It is intended that the provision will insure both that U.S. forces are withdrawn from Cambodia and that our forces do not become involved in a war in behalf of Cambodia. In order to accomplish this the section prohibits use of any funds for certain specific purposes.

(1) It would prohibit use of appropriated funds to retain any U.S. forces in Cambodia. This provision will prevent the indefinite presence in Cambodia of U.S. forces in Vietnam which are now there to engage in actions against Vietcong and North Vietnamese forces and bases. The provision was drafted in keeping with the President's assurances to the Nation that the current operations involving U.S. forces are temporary and that U.S. forces will soon be withdrawn. This provision will say, by law, that the operation is temporary in nature and that U.S. forces shall not be sent again into action in Cambodia. This is also in accordance with the statement made by the President in his May 8 news conference “* * *” that if the enemy does come back into those sanctuaries the next time the South Vietnamese will be strong enough and well trained enough to handle it alone.”

This language would also prohibit the sending of U.S. personnel into Cambodia as advisers to South Vietnamese military units. If South Vietnamese troops either stay in Cambodia or leave and later return, as the President has indicated they may do, this provision will effectively prohibit any U.S. participation as advisors in those operations.

(2) Subparagraph (2) is designed to prevent (A) involvement by U.S. personnel, military or civilian, in combat activities in support of Cambodian forces, and (B) any U.S. personnel from providing military instruction to Cambodian military forces.

The President said on April 30 that, “* * * we shall do our best to provide the small arms and other equipment which the Cambodian army of 40,000 needs and can use for its defense.” U.S. involvement in Vietnam began with an aid program. The sending of military advisers almost invariably follows, unless the military assistance is confined to the small arms which the President mentioned. Now that the decision has been taken to send weapons to Cambodian forces, unless Congress takes action, the sending of U.S. advisers could very well be the next fatal step into the Cambodian quicksand.

(3) Subparagraph (3) is intended to prohibit any U.S. financed contracts or agreements which provide for persons, other than American personnel, to engage in combat in support of Cambodian forces or to provide military instruction in Cambodia. It would prohibit the United States from doing indirectly what cannot be done directly because of the restriction in subparagraph 2. It would, for example, prevent the United States from paying for the services of mercenaries or others who, without this provision, could be brought in to aid the Cambodian forces.

(4) Finally, subparagraph (4) would prohibit financing with U.S. funds combat activity in the air above Cambodia in support of Cambodian forces

One of the Senate changes to the Defense authorization bill, H. R. 17123, which will be the subject of conference committee action arises out of the amendments to the free world forces language, section 502, which reads as follows:

"Subsection (a) of section 401 of Public Law 89-357, approved March 15, 1966 (80 Stat. 37), as amended, is hereby amended to read as follows:

'(a)(1) Not to exceed \$2,500,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine.'"

Senator Fulbright's amendment No. 812 would add the following to the above-quoted language:

Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese or other free world forces in actions designed to provide military support and assistance to the Government of Cambodia or Laos.

The only change in the first paragraph quoted above from the House version is the phrase "in support of Vietnamese forces" instead of the previous words "in Vietnam" in order to make clear that funding is authorized for military action in sanctuary areas in support of Vietnamization or protection of U.S. troops. This clarification is acceptable to the House conferees.

The Fulbright amendment, does, however, present a serious question of interpretation. In the Senate floor debate on amendment No. 812 Senator Fulbright argued that this amendment did nothing more than carry out the intent of the Armed Services Committee as stated in its report--"There is no intent to permit the use of DOD appropriations under this authority to support Vietnamese and other free world forces in actions designed to provide military support and assistance to the Cambodian Government."--although he went one step further by extending the prohibition to Laos. This attempt at clarification of the bill has actually raised additional questions of interpretation. While there may be substantial agreement that the U.S. should not give support to free world forces in actions designed to provide military support and assistance to the government of Cambodia or Laos, the question of what constitutes that support and what constitutes a contribution to the U.S. effort in South

Vietnam would become a difficult matter of construction under this language. In other words, it is quite possible that a specific action in Southeast Asia could conform to the expression contained in the Armed Services Committee report and yet be barred by certain interpretations of the language in the Fulbright amendment because it could also have the effect of supporting the governments of Cambodia or Laos.

It is the policy of our Government to withdraw U. S. troops from Vietnam as rapidly as ~~possible~~^{feasible} and through Vietnamization to encourage Southeast Asian countries to shoulder their own burdens. We cannot afford to prohibit an action which could contribute to these objectives merely because it might incidentally tend to support the government of one of those Southeast Asian countries. For example, if the use of free world elements, Thai, Cambodian, South Vietnamese, added to the effort of the Laos troops and guerrillas would put significantly increased pressure on the North Vietnamese in Laos, this would affect favorably the situation in South Vietnam by drawing off North Vietnam personnel and supplies and in some cases perhaps permit a more effective interdiction of such personnel and supplies on their way to South Vietnam through Laos. The fact that the Government of Laos would benefit therefrom should not prevent U.S. support of such actions or similar actions in Cambodia if the tactical situation there indicated that it would materially aid the situation in South Vietnam.

In sum we are faced with a fluid situation in Southeast Asia in which military and political developments transcend national boundaries. In these circumstances the precise application and implications of the Fulbright amendment are difficult to foresee. In certain circumstances the language of the amendment could severely restrict the flexibility of U.S. actions and tie the hands of our policymakers by foreclosing certain options. The dual aims of effecting the safe and orderly phased withdrawal of U.S. troops and Vietnamization of the Indo-China war, demand maximum flexibility and freedom of action for U.S. policymakers. The Fulbright amendment (No. 812) should accordingly be stricken from the bill or, failing this, modified by one of the following amendments:

[*primarily*]

- a. Insertion of the word "solely" between the words

"designed" and "to" at line 20, page 21 of H. R. 17123 as passed by the Senate. The amendment would then read:

"... Nothing in clause (A) of the first sentence of this paragraph shall be construed as authorizing the use of any such funds to support Vietnamese, or other free world forces in actions designed ^{primarily} to provide military support and assistance to the Government of Cambodia or Laos." or,

- b. Insertion of the following words at the end of the amendment:

"... Unless it is determined that support to Vietnam or other free world forces in Cambodia or Laos would materially contribute to the Vietnamization of the war in South Vietnam and the opportunities for withdrawal of U.S. forces from South Vietnam." or,

c. By adding at the end of the amendment:

"... Unless such action is for the purpose of Vietnamization or the protection of U.S. troops."

In the event modification of the Fulbright amendment is not feasible the conference report should make it clear that there is no intention to bar military action under the Fulbright amendment if such action is deemed necessary for Vietnamization or the protection of U.S. troops.